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ABSTRACT

Legal considerations in student discipline policies, particularly expulsion, and the rights of handicapped students are discussed in this paper. The public school administrator's dilemma is to uphold students' legal rights while maintaining a safe learning environment for all students. A review of recent litigation concludes that implementation of the Rehabilitation Act (1974) and the Education for all Handicapped Children Act (1975) has provided civil and entitlement rights, yet has been accompanied by an upsurge in litigation. The recommendation is made for establishing a limit on resources that are spent on court litigation and encouraging mediation. (12 references) (LMI)

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## Handicapped Students: The Explusion Question

1. Issue

Rights of the handicapped, in regards to discipline, have been an issue in litigation since the implementation of the Rehabilitation Act (section 504), 29USC 794 (1974) and the Education for All Handicapped Children Act, 20USC 1401-1461 (1975).[1] These acts provide both civil rights (section 504) and entitlement rights (PL94-142) to the handicapped.[2] The dilemma for the public school administrator lies in preserving the specific legal rights of handicapped students, in regards to discipline, while maintaining an orderly, safe learning environment for all students in the school. With the passage of the Handicapped Children's Protection Act in 1986, which allows for parents to be reimbursed reasonable attorney fees if they are found to be the prevailing party in litigation, more attorneys, advocates, and parents are closely scrutinizing the procedures implemented in all areas of special education.[3] This requires that the school administrator be cognizant and wary of possible procedural errors when determining the discipline of handicapped students. This is particularly the case in expulsion proceedings.

2. Points of View

There is a plethora of both case law and specific regulations governing discipline of handicapped students. Handicapped students, as defined in 34CFR300.5 includes deaf, deaf-blind, hard-of-hearing, mentally retarded, multi-handicapped, orthopedically handicapped, other health impaired, severely emotionally disturbed, specific learning disabled, speech impaired and visually handicapped.[4] The group that appears to create the most difficulty for the school administrator in terms of available discipline are the seriously emotionally disturbed students. Many of these students may exhibit acting out or violent behaviors that can create chaos in the school program, as well as injury to other students and staff. However, all handicapped students may or may not exhibit behavior problems which would subject them to expulsion proceedings and will require close scrutiny by the school administrator.

There is a continuum of significant case law addressing issues related to expulsion of handicapped students. One of the first cases to address the issue of expulsion was Goss vs. Lopez (1975). In this case, the Supreme Court stated that, "at the very minimum... students facing suspension and the consequent interference with a protected property interest, must be given some kind of notice and some kind of hearing." This court decision states that all students have property rights in education and must be afforded due process rights under the Fourteenth Amendment before they are suspended. This case

provides due process protection for both handicapped and non-handicapped students.[5]

In the case of Stuart vs. Nappi (1978), heard in the United States District Court of Connecticut, the provisions of PL94-142 came in conflict with the conventional school policies that allowed removal of children from the classroom when they exhibited disruptive behavior. The court concluded in this case that the school district would have to conform to the procedural safeguards of PL94-142 when excluding handicapped students from school. The court provided four rights established by PL94-142 with respect to Ms. Stuart's suspension and expulsion. They are as follows: 1) the right to an appropriate public education, 2) the right to remain in the present placement until the resolution of her special education complaint, 3) the right to an education in the least restrictive environment, and 4) the right to have all changes of placement follow prescribed procedures. These rights became the court's test for decisions of handicapped discipline issues.[6]

A year later, in the case of Doe vs Kroger (1979), another Federal Court in Indiana refined the Nappi decision. The court held that a child is protected from the districts usual discipline procedures only when it can be shown that the disruptive behavior relates to a student's handicap. If a relationship exists, the court stated a change in educational placement is indicated. If no relationship exists, then the use of formal expulsion procedures by the district is appropriate.[7]

In the 1981 case of S1 vs. Turlington, the 5th Circuit Court further clarified principles of expulsion regarding handicapped

students. The court provided three principles of law as follows: 1) before a handicapped student may be expelled, a group of trained and knowledgeable persons must determine whether the student's misconduct bears a relationship to his or her handicapping condition (not limited to SED students), 2) an expulsion is a change in placement thereby invoking the procedural protection of PL94-142 and Section 504, and 3) expulsion is a proper disciplinary tool under PL94-142 and Section 504 but, a complete cessation of services is not. This case required that some form of alternative educational services be provided during the term of the expulsion to prevent significant regression.[8]

In the case of Board of Education of the City of Peoria, District 150 vs Illinois State Board of Education (1981), the court concluded that a five day suspension for misbehavior is not equated to an expulsion. Therefore, in referencing Goss vs Lopez, the court allowed that suspension is a necessary and valuable educational tool to enforce ordinary school discipline and supported the local district on appeal. This decision allowed schools a vehicle for discipline of the handicapped up to five days without enforcing the PL94-142 procedures mandated for expulsion. It clearly stated the difference in suspension vs expulsion as it relates to a change in placement.[9]

In 1988, the Supreme Court ruled in the Honig vs. Doe case. The case developed when the school district refused to return a dangerous student to his prior placement during the pendency of a special education haring to protest the decision of the ARD committee relevant to the student's expulsion. The "stay put" provision of PL94-142 was

determined by the court to be unequivocal and not subject to exception for dangerous students. If the removal from school is more than ten days and the parents disagree, the school may seek injunctive relief to prevent the student from returning to the placement if it can be shown that the placement is likely to result in injury either to the student in question or to other students in the placement. This appears to place a level of school discipline relating to exclusion as a danger to others in the hands of the courts.[10] However, it is significant that the court ruled on suspensions of ten days or less as not constituting a change of placement. This extends the previous five day suspension upheld in Peoria vs. Illinois SBOE which gives schools greater flexibility in administering discipline without addressing procedural tests of PL94-142 constituting a change of placement. The ten day rule also allows adequate time for the schools to seek injunctive relief to prevent a dangerous student from returning to school if the parents pursue a special education hearing contesting the expulsion.[11]

3. The Question

Since the passage of the Handicapped Children's Protection Act of 1986, there has been an upsurge in the number of special education hearings and court litigation revolving around many areas of special education, especially issues involving discipline. The time and resources defending the challenges brought by many parents often outweighs the value of the decisions

given by the hearing officers in defending the rights of the handicapped. A generation of lawyers have become quite wealthy at the expense of local districts and parents by pursuing many cases to hearing and court litigation that could very often be settled in mediation proceedings. The process in Texas is not only costly and time consuming but certainly distracts attention from existing educational programs for all children.

Without question, PL 94-142 (IDEA) and Section 504 of the Rahabilitation Act have opened the door to public education for many handicapped students, who for generations had found it closed. We are now serving thousands of handicapped children whose education would have been neglected had it not been for these statutes and for the case law that has resulted from them. The question needs to be asked now, "Should there be a limit on the resources we spend for lawyers, courts and hearing officer?" "Is there a better way?", a way that will permit us to serve children and maximize our tax dollars on children. We hope so.

Notes

1 Yudof, Mark G., et al. Educational Policy and the Law (Berkeley: McCutchan Publishing, 1987), 791-848.

2 Yudof, et al. 792.

3 Deskbook Encyclopedia of American School Law (Rosemont: Data Research, Inc., 1988), 491-494.

4 State Board of Education Rules for Special Education Services - Including Federal Regulations and State Laws Austin: Texas Education Agency, 1989), 5-7.

5 95 S.Ct. 729 (1975).

6 443 F.Supp. 1235 (1978)

7 480 F.Supp. 225 (1979)

8 635 F.2d. 342 (1981)

9 531 F.Supp. 148 (1982)

10 108 S.Ct. 592 (1988)

11 Skenkovich, Jane. "The Schools Advocate." 3 (April 1988): 173-174.

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